

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JAMES C. AND SUZANNE SHERMAN)

Appearances:

For Appellants: Joseph Sterhbach, Certified Public
Accountant

For Respondent: Burl D. Lack, Chief Counsel

O P I N I O N

This appeal is made pursuant to Section 18594 of the Revenue and Taxation' Code from the action of the Franchise Tax Board on protests to proposed assessments of additional personal income tax in the amounts of \$1,012.50 \$843.75, \$802.39, \$580.32, \$358.79, \$302.98, \$752.27 and \$758.74 for the years 1949 through 1956, inclusive.

Prior to 1945 Appellants spent their lives in the Chicago, Illinois, area. Most of their relatives and old friends still reside in that area.

Appellants first visited California in 1945. At that time they purchased a lot in Beverly Hills upon which a house was built in 1948.

During the years in question Appellants' time was approximately equally divided between California and Illinois. In no year did Appellants spend more than six and one-half months in California. While here Appellants resided in the house which they had built in Beverly Hills and while in Chicago they stayed in an apartment in the home of Mr. Sherman's sister. Appellants owned a house in Illinois which they rented to various parties during the years in question.

Appellants had two small businesses in Chicago from which they derived some income. The balance of their income and the most substantial part of it was received from dividends on stock owned by them. No businesses were operated by Appellants in California.

Appellants maintained charge accounts and bank accounts in both Chicago and Los Angeles. The bank account in California

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was a checking account used for the operating expenses of the Beverly Hills house.

Appellants' drivers' licenses were issued in Illinois and their automobile was registered there.

Appellants used medical facilities and doctors in both Illinois and California but a Los Angeles dentist did their dental work.

Appellants were registered to vote in Illinois, although the registration lapsed in approximately 1949. They did not register to vote in California until after the years in question. Federal income tax returns, listing an Illinois address as their residence, were filed by Appellants through the year 1956. In applications for passports Appellants listed Illinois as their residence.

In 1953 Respondent issued an arbitrary assessment for the year 1950. Shortly thereafter, Respondent determined that Appellants were non-residents. In 1958 a demand for returns for the years 1947 through 1956 was sent to Appellants. No returns were filed. Respondent then issued proposed assessments for the years 1947-1956. A 25 percent penalty for failure to file was included for each year and a 25 percent penalty for failure to file after demand was included for all years except 1950. Appellants protested and an oral hearing was held with Respondent. Respondent withdrew proposed assessments for 1947 and 1948 and affirmed the assessments for 1949 through 1956.

Appellants have conceded residence since 1957 and since that time have filed returns and paid personal income taxes to this State.

The controlling issue to be decided is whether Appellants were residents of California during the years 1949 through 1956.

Section 17014 (formerly 17013) of the Revenue and Taxation Code provides:

"Resident" includes:

- (a) Every individual who is in this State for other than a temporary or transitory purpose.
- (b) Every individual domiciled in this State who is outside the State for a temporary or transitory purpose.

Any individual who is a resident of this State continues to be a resident even though temporarily absent from the State.

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Regulation 17013-17015(b), Title 18, California Administrative Code, considered the meaning of temporary and transitory purpose and provided:

Whether or not the purpose for which an individual is in this State will be considered temporary or transitory in character will depend to a large extent upon the facts and circumstances of each particular case...

* * *

The underlying theory ... is that the State with which a person has the **closest** connection during the taxable year is the State of his residence. Consequently, where a **person's** time is equally divided between California and the State of domicile, he will not be held to be a resident of California.

Measured by the standard of this regulation, the facts before **us** fall short of establishing that Appellants were residents of California during the years in question. Illinois, was, and for many years past has been, their place of domicile. Their business interests social interests and relatives were all centered in the Chicago ,~~Illinois~~, area. Appellants engaged in no business activities in **California**.

In addition, Appellants' time spent in California was almost always during the winter months which is consistent with their position that California was their vacation home from which they sought relief from the rather severe winters of Illinois.

We believe that Appellants' closest connection during the years in question was with Illinois and not California, Appellants were, therefore, not residents of California. (Appeal of Clete L., Cecelia and Hilda Sylvia Boyle, Cal. St. Bd. of Equal., Dec. 16, 1958; CCH Cal. Tax Cas. Par. 201-189; 3 P-H St. & Local Tax Serv. Cal. Par. 58140.)

Although Appellants raised some question as to the effect of Respondent's reversal of its earlier determination of Appellants' status as residents, in view of our decision on the main issue we need not consider that question.

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O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of James C. and Suzanne Sherman to proposed assessments of additional personal income tax in the amounts of \$1,012.50, \$843.75, \$802.39, \$580.32, \$358.79, \$304.98, \$752.27 and \$758.74. for the years 1949 through 1956, inclusive, be and the same is hereby reversed.

Done at Sacramento, California, this 6th day of August, 1962, by the State Board of Equalization.

Geo. R. Reilly, Chairman

Paul R. Leake, Member

Richard Nevins, Member

John W. Lynch, Member

 , Member

ATTEST: Ronald B. Welch, Acting Secretary